IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

WA.No. 2864 of 2007

AGAINST THE JUDGEMENt IN WPC.31519/2007 Dated 14/11/2007
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APPELLANT/3RD RESPONDENT:

K.J.MATHEW, KUNNEAL HOUSE,
KULAYATTIKKARA,
KANJIRAMATTOM, ERNAKULAM.

BY ADV. SRI.B.GOPAKUMAR
SMT.CHINCY GOPAKUMAR

RESPONDENTS/RESPONDENTS 1 AND 2:
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1. HINDUSTAN NEWS PRINT LTD.,
NEWSPRINT NAGAR P.O., MEVALLOOR,
KOTTAYAM DISTRICT, REPRESENTED BY ITS MANAGING DIRECTOR.

2. THE GENERAL MANAGER(WORKS),
HINDUSTAN NEWSPRINT LTD.,
NEWSPRINT NAGAR P.O., VELLOOR, KOTTAYAM.

3. M/S GLASS FIBRESS , KRISHNA NIVAS,
MEVELOOR P.O., MEVELLOOR,
KOTTAYAM DISTRICT, REPRESENTED BY ITS MANAGING DIRECTOR M.P.GOPAKUMAR.

R1 & R2 BY ADV. SRI. A.M. SHAFFIQUE.
R3 BY ADV. SRI. ALIAS M. CHERIAN.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 03/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, CJ. & K.M. JOSEPH, J.

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WRIT APPEAL No.2864 of 2007

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Dated this the 3rd day of December, 2007.

JUDGMENT

K.M.JOSEPH,J,

The third respondent in the writ petition is the appellant before us. The writ petition was filed by the third respondent in the present appeal challenging the award of the work of Newsprint Handling pursuant to the notification by respondents 1 and 2 in favour of the appellant. Two grounds were taken as can be seen on a perusal of the judgment in the writ petition. The first ground was that the appellant was not pre-qualified to participate in the tender. The further contention by the writ petitioner was that the appellant had corrected the rates in the tender. Learned Single has found favour with the first contention, namely that the appellant was not pre-qualified to participate in the tender. For arriving at the said conclusion, the learned Single Judge has relied on the stand of the first respondent Company itself. The stand of the Company in relation to the question as to whether the petitioner was pre-qualified has been extracted in the judgment and we also refer it in our judgment.

> "With regard to the averments contained in Grounds A, B and C of the writ petition, it is submitted that they are devoid of any merit, and hence denied. The averments in Ground A that the 3rd respondent did not qualify any of the criteria specified in Ext.P2 is factually incorrect. While one of the pre-qualification criteria prescribed in the tender document was that the tenderers should have successfully completed three labour oriented works contracts of annual value not less that 40% of the annual PAC (59.15 lakh) during any of the preceding seven years from 31.3.2007, it was found that the 3rd respondent had completed work of the said nature, subject to

> a marginal deficit of Rs.70,000/- in the 3rd work during the stipulated period. When the respondent Company sought clarification from its internal audit department as to whether the third respondent could be deemed to have complied with the pre-qualification criteria for the worK, the internal audit department clarified that in view of the works undertaken by the 3rd respondent in the past, and also considering the fact that the deficit in the last work was only Rs.70,000/-, when compared to the total value of the works undertaken, his bid could also be considered for the purpose of awarding the work. This suggestion of the internal audit department was accepted by the Managing Director of the respondent Company and, accordingly, his bid also was considered along with those of the other three tenderers, who were qualified under the tender conditions."

Thus the finding of the learned Single Judge would appear to be that the appellant was not pre-qualified for the reason that the appellant had, though executed three works within the preceding seven years from 31.3.2007, in respect of one of the works the value fell short of the prescribed limit by Rs.70,000/-. In the light of this finding, the learned Single Judge found it not necessary to go into the second contention as to the alleged subsequent correction by the appellant.

2. Learned counsel for the appellant, Sri. B. Gopakumar would contend that by Ext.R3(b) dated 20.10.2007 the appellant came to be pre-qualified. Tender of the appellant was the lowest. He would contend that the actual complaint of the writ petitioner was regarding the alleged subsequent correction made by the appellant, which was by reducing the rate from Rs.18/- to Rs.16/-. He would submit that the question relating to the pre-qualification was never contended before the learned Single Judge and yet the learned Single Judge has proceeded to find that the appellant was not pre-qualified. He would further point out with reference to the relevant clause that having regard to the value of the three works which he had executed, the Company has

taken the view that he must be treated as pre-qualified and it was a view which should have commended itself for the acceptance of the learned Single Judge. He would commend the view taken by the Company for our acceptance. We extract the clause relied on as hereunder:

> "(c) Tenderers should have successfully completed three labour oriented works contract of annual value not less than 40% of the annual PAC (59.15 lakhs) during any of the preceding 7 years from 31.3.2007."

He would further contend that the writ petitioner did not really challenge the right of the third respondent to be pre-qualified. He would further contend that the tender of the appellant was the lowest and the first respondent being a Public Sector Company would lose several lakhs of rupees if the appellant's pre-qualification is interfered with and the work is awarded to the writ petitioner. He would further submit that it is the settled view of the courts that the courts should not interfere with the awarding of work.

3. As far as the contention that the question whether the appellant was pre-qualified was not an issue before the learned Single Judge is concerned, we are of the view that the writ petitioner had called in question the pre-qualification of the appellant. This is clear from Ground A. Ground A is extracted hereunder:

> "A. There are four alternative pre-qualification criteria stipulated in Ext.P2 for a person to participate in the Tender. The said pre-qualification criteria are mandatory. The third respondent did not qualify any of the said criteria in Ext.P2. Hence the 3rd respondent is not fit and entitled to participate in the Tender and his tender is liable to be rejected."

It is further pointed out by learned counsel appearing on behalf of the writ petitioner that in Ext.P5 dated 23.10.2007 the writ petitioner had specifically pointed out that the appellant is not pre-qualified for participating in the tender as per the pre-qualification criteria.

4. We notice that the learned Single Judge had indeed before him two issues projected by the writ petitioner, namely whether the appellant was pre-qualfiied and as to whether there was subsequent correction by the appellant. The learned Single Judge, as already stated, had found that the appellant was not pre-qualified. Therefore, we reject the contention of the appellant that the issue relating to the pre-qualification was not present before the learned Single Judge.

5. The further question to be decided in this case is whether the view taken by the learned Single Judge that the appellant was not pre-qualified requires to be interfered with. We would think that the learned Single Judge was fully justified in finding that the appellant was not pre-qualified. Learned counsel for the appellant fairly submits that he claims the right to be pre-qualified only under the third alternate clause, which we have extracted. We would think that the third alternate clause indeed mandates that the tenderers should have successfully completed three labour oriented works contract, each having a value equivalent to 40% of the annual PAC. Though the appellant has executed three works, in respect of one of the works, he fell short by Rs.70,000/-. It is evident on a perusal of the clause in question that the employer contemplated that the contractor should have executed three labour oriented works, each having a value of 40% of the PAC. We would think that no other view is possible. If that be so, it is clear that the appellant was not eligible to be pre-qualified and that has been found by the learned Single Judge. The learned Single Judge thereafter has quashed the award of contract to the appellant and directed respondents 1 and 2 to

consider the matter afresh in accordance with law. We find that there is no merit in this appeal.

Accordingly, the writ appeal is dismissed.

Consequently, I.A. No.968 of 2007 is dismissed.

H.L. DATTU,
CHIEF JUSTICE

K.M. JOSEPH,
JUDGE

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